

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

07 Cr. 658 (RPP)

RAFAEL BARRIOS, :

Defendant. :

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GOVERNMENT'S PROPOSED EXAMINATION
OF PROSPECTIVE JURORS

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**GOVERNMENT'S PROPOSED EXAMINATION
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The Government respectfully requests that the Court include the following questions in its examination of prospective jurors pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure. The Court is requested to pursue more detailed questioning if a particular juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the juror in favor of or against either the Government or the defendant.

The Charges

1. This is a criminal case. The defendant in this case, RAFAEL BARRIOS, has been charged with the commission of federal crimes in an Indictment filed by a grand jury sitting in this district. The Indictment is not evidence itself. It simply contains the charges that the Government is required to prove to the satisfaction of the trial jury beyond a reasonable doubt.

Those of you selected to sit on this jury will receive a detailed explanation of the charges at the conclusion of the case, but I would like to give you a brief summary of the charges so that we can determine whether there is anything about the charges that would make it impossible for you to sit as a fair and impartial juror.

The Indictment charges the following crimes, or charges: (i) Count One charges the defendants with possessing with intent to distribute cocaine, on or about March 30, 2007; and (ii) Count Two charges that, on or about March 30, 2007, RAFAEL possessed and carried a firearm, namely a loaded 9-millimeter semi-automatic pistol, during and relation to, and in furtherance of, the drug trafficking crime charged in Count One.

2. Does any juror have any personal knowledge of the charges in the Indictment as I have described them?

3. Does any juror feel that he or she could not view fairly and impartially a case involving such charges? Has any juror formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be crimes?

4. Do any of you have any opinion about the enforcement of federal laws generally that might prevent you from being fair and impartial in this case?

5. Do any of you believe that the unlawful distribution of narcotics should not be illegal, or that the laws governing these crimes should not be enforced? Would any of you have difficulty following the law on narcotics violations as I will instruct you on it?

6. Has any juror been involved in an offense involving narcotics? Has any juror's relative, close friend or associate been involved in an offense involving narcotics? Has any juror, or any member of a juror's family, or any juror's close friend, had any experiences of any kind, directly or indirectly, with narcotics?

7. Do any of you believe that the possession of firearms in relation to a drug trafficking offense should not be illegal, or that the laws governing firearms generally should not be enforced? Would any of you have difficulty following the law on such a weapons violation as I will instruct you on it?

8. Has any juror been involved in an offense involving firearms? Has any juror's relative, close friend or associate been involved in an offense involving firearms? Has any juror, or any member of a juror's family, or any juror's close friend, had any experiences of any kind, directly or indirectly, with firearms?

Knowledge of the Trial Participants

9. As I mentioned a moment ago, the defendant in this case is RAFAEL BARRIOS. Does any juror know, or has he or she had any dealings, directly or indirectly, with the defendant, or with any relative, friend or associate of the defendant?

10. Does any juror have any relatives, friends, associates, employers or employees who know or who have any dealings with the defendant, or with any relative, friend or associate of the defendant?

11. RAFAEL BARRIOS is represented by his attorneys Bruce Barket and Toni Marie Angeli. [PLEASE ASK MR. BARKET AND MS. ANGELI TO STAND]. Do any of you know Mr. Barket or Ms. Angeli? Has any juror had any dealings with Mr. Barket or Ms. Angeli, or their law firm, either directly or indirectly?

12. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, Michael J. Garcia. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys David O'Neil and Anirudh Bansal. [PLEASE ASK THE AUSAs TO STAND]. They will be assisted throughout the trial by William O'Donnell, a Police Officer with the New York Police Department. [PLEASE ASK THE OFFICER O'DONNELL TO STAND]. They will also be assisted by a paralegal with the United States Attorney's Office, Alexandra Bertrami. [PLEASE ASK MS. BERTRAMI TO STAND]. Do any of you know Mr.

Garcia, Mr. O'Neil, Mr. Bansal, Officer O'Donnell, or Ms. Bertrami? Have any of you had any dealings, either directly or indirectly, with any of these individuals?

13. Does any juror know, or has any juror had any dealings, either directly or indirectly, with any of the following persons who may be witnesses or whose names may be mentioned in this case:

[A list will be supplied to the Court prior to jury selection.]

14. Does any juror know, or is any juror familiar with, either directly or indirectly, any of the following locations that may be mentioned in this case:

[A list will be supplied to the Court prior to jury selection.]

Relationship With Government

15. You will hear that this case was investigated by the United States Attorney's Office for the Southern District of New York, the New York Police Department, and the United States Drug Enforcement Administration. Does any juror know, or have any association -- professional, business, or social, direct or indirect -- with any member of these law enforcement agencies? Is any member of your family employed by any law enforcement agency, whether federal, state or local?

16. Has any juror -- either through any experience he or she has had or anything he or she has seen or read -- developed any bias or prejudice for or against the United States

Attorney's Office, the New York Police Department, or the United States Drug Enforcement Administration?

17. Have you, or has any member of your family, either as an individual or in the course of his or her business, ever been a party to any legal action or dispute with the United States or any of the officers, departments, agencies, or employees of the United States - including the Internal Revenue Service - or had any interest in any such legal action or dispute or its outcome? More specifically, have you, or has any member of your family, ever had a dispute concerning payment of money owed to you by the Government?

Prior Jury Service

18. Have you ever at any time served as a member of a grand jury, whether in federal, state, county or city court? If so, when and where?

19. Have you ever served as a juror in a trial in any court? If so, in what court did you serve and was it a civil or criminal case? What type of case was it? Did the jury reach a verdict?

Experience as a Witness, Defendant, or Crime Victim

20. Has any juror or any relative or close friend ever been involved or appeared as a witness in any investigation by a federal or state grand jury or by a Congressional or state

legislative committee, licensing authority, or Governmental agency, or been questioned in any matter by a federal, state, or local law enforcement agency?

21. Have you or has a relative or close friend ever been a witness or a complainant in any hearing or trial, state or local or federal?

22. Are you, or is any member of your family, or a close friend, now under subpoena or, to your knowledge, about to be subpoenaed in any criminal case?

23. Have you, or has any member of your family, any associate or close friend, ever been charged with a crime?

24. Have you or any relative, associate, or close friend ever been the subject of any investigation or accusation by any federal or state grand jury?

25. Have you or any friend or relative ever been a victim of a crime?

Views On Witnesses

26. Law Enforcement Personnel: The witnesses in this case will include, among others, Federal agents and state and local police officers. Would you be more likely to believe or disbelieve a witness merely because he or she is a law enforcement officer?

27. Expert Witnesses. You may hear testimony in this case by expert witnesses. Have any of you had any experiences

with experts, or do you have any general feelings about the use of experts, that would make it difficult for you to render a wholly fair and impartial verdict?

28. Searches. Some of the evidence may come from searches performed by law enforcement officers. I instruct you that those searches were legal and that the evidence obtained from those searches is admissible in this case. Do you have strong feelings about searches conducted by law enforcement officers or the use of evidence obtained from searches at trial?

Persons Not On Trial

29. The defendant is charged with committing the charged crimes when he was in the presence of other individuals. Those other individuals are not on trial here. You may not draw any inference, favorable or unfavorable, towards the Government or the defendants from that fact. You also may not speculate as to the reason why other persons are not on trial. Is there any juror who cannot follow this instruction or who for this reason would have difficulty rendering a fair and impartial verdict?

Other Questions

30. Does any juror have a problem with his or her hearing or vision which would prevent him or her from giving full attention to all of the evidence at this trial? Is any juror taking any medication which would prevent him or her from giving full attention to all the evidence at this trial? Does any juror

have any difficulty in reading or understanding English in any degree?

Function of the Court and Jury

31. The function of the jury is to decide questions of fact. You are the sole judges of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact finders. However, when it comes to the law you must take your instructions from the Court and you are bound by those instructions. You may not substitute your notions of what the law is or what you think it should be. At the conclusion of the case, your job will be to determine whether or not each defendant is guilty as charged in the Indictment.

32. Does any juror have any bias or prejudice that might prevent or hinder him or her from accepting the instructions of the law that I will give you in this case?

33. Will each juror accept the proposition that the question of punishment is for the Court alone to decide and that the possible punishment must not enter into the deliberation of the jurors as to whether the defendant on trial here is guilty?

34. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established the defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict against either defendants for

reasons unrelated to the law and the evidence?

35. Does any juror have any religious, philosophical or other belief which would make him or her unable to render a guilty verdict for reasons unrelated to the law and the evidence?

Other Biases

36. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior questions, does any juror have the slightest doubt in his or her mind, for any reasons whatsoever, that he or she will be able to serve conscientiously, fairly, and impartially in this case and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained?

Juror's Background

37. The Government respectfully requests that the Court ask each juror to state the following information:

- (a) the juror's occupation;
- (b) the name of the juror's employer;
- (c) the period of employment with that employer;
- (d) the nature of the juror's work;
- (e) the same information concerning other employment within the last five years;
- (f) the same information with respect to the juror's spouse and any working children;

- (g) the area in which the juror currently resides and any other area in which the juror has resided during the last five years;
- (h) the educational background of the juror, including the highest degree obtained;
- (i) the juror's hobbies;
- (j) the names of the newspapers and magazines the juror reads; and
- (k) the names of the television programs the juror regularly watches.

**Requested Instruction Following
Impaneling of the Jury**

38. From this point on until you retire to deliberate on your verdict, it is your duty not to discuss this case and not to remain in the presence of other persons who may be discussing this case. This rule about not discussing the case with others includes discussions even with members of your own family or friends.

39. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me.

40. In this regard, let me explain to you that the attorneys and the defendant in a case are not supposed to talk to jurors, even to offer a friendly greeting. So if you happen to see

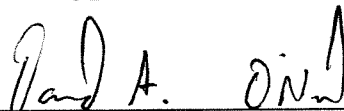
any of them outside this courtroom they will, and should, ignore you. Please do not take offense. They will only be acting properly by doing so.

Dated: New York, New York
November 19, 2007

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York,
Attorney for the United States
of America

By:



DAVID A. O'NEIL/ANIRUDH BANSAL
Assistant United States Attorneys
Tel.: (212) 637-2533/2516

CERTIFICATE OF SERVICE

ALEXANDRA BERTRAMI deposes and says that he is employed in the Office of the United States Attorney for the Southern District of New York, and that on November 19, 2007, she caused a copy of the attached Government's Proposed Examination of Prospective Jurors to be served by overnight carrier, on:

Bruce Barket, Esq.
666 Old Country Road, Suite 600
Garden City, NY 11530
(516) 742-0101
Counsel for RAFAEL BARRIOS

by causing a copy of same to be delivered by Federal Express to the above addresses.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Alexandra Bertrami

Dated: November 19, 2007